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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,866	04/11/2005	John-Olov Jansson	JANSSON7	2241

1444 7590 12/22/2008
BROWDY AND NEIMARK, P.L.L.C.
624 NINTH STREET, NW
SUITE 300
WASHINGTON, DC 20001-5303

EXAMINER

LUKTON, DAVID

ART UNIT	PAPER NUMBER
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1654

MAIL DATE	DELIVERY MODE
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12/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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624 NINTH STREET, NW
SUITE 300
WASHINGTON, DC 20001-5303

DEC 22 2008

In re Application of: :
John-Olov Jansson :
Serial No.: 10/530,866 : PETITION DECISION
Filed: April 11, 2005 :
Attorney Docket No.: JANSSON7 :

This is in response to the petition filed October 16, 2008 under 37 CFR § 1.181, requesting that the finality of the Office action of July 22, 2008 be withdrawn.

BACKGROUND

The examiner mailed an Advisory Action on February 28, 2008. In this Advisory Action, the examiner indicated that the claim amendments filed after final Office action [on January 29, 2008] would not be entered because they raised new issues that would require further consideration and/or search (see box 3(a) of the Advisory Action form, PTOL-303).

On April 23, 2008, applicant filed a Request for Continued Examination (RCE) along with the appropriate fees. In this RCE, applicant specifically fulfilled the requirements of 37 C.F.R. § 1.114 (submission) by indicating that the submission was filed on January 29, 2008 and that said submission, containing claim amendments was to be considered for examination (see RCE, 1.a.).

On July 22, 2008, the examiner mailed a final Office action setting a three month statutory limit for reply.

In response thereto, applicant filed this petition on October 16, 2008 under 37 CFR § 1.181, requesting that the finality of the Office action of July 22, 2008 be withdrawn.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition filed on October 16, 2008, applicant argues that the final Office action instituted by the Examiner on July 22, 2008 was improper and premature due to the fact that the examiner refused entry of the claim amendments after final Office action as indicated by the Advisory Action mailed by the examiner on February 28, 2008.

To support these contentions, applicant cites the MPEP § 706.07(h)(VIII) as well as MPEP § 706.07(b):

MPEP 706.07(h) (VIII) states:

The action immediately subsequent to the filing of an RCE with a submission and fee under 37 CFR 1.114 may be made final only if the conditions set forth in MPEP 706.07(b) for making a first action final in a continuing application are met...

MPEP 706.07(b), third paragraph states:

However, it would not be proper to make final a first Office action in a continuing or substitute application where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised. (p. 2, Petition, emphasis in applicant's Petition).

A review of the prosecution history of this case clearly shows that the examiner refused entry of the amendments filed after final Office action for raising new issues that would require a new consideration and/or search as indicated by the Advisory Action form. Made clearly evident by the MPEP, when a decision to refuse entry of an amendment filed after final Office action is made by the examiner due to an issue which would require a new consideration or search, the next action mailed by the examiner in reply to the filing of an RCE is *precluded from finality*.

Hence, applicant's points are well-taken and found persuasive. It is decided that the final Office action mailed on July 22, 2007 was in fact premature and in error. The finality of said rejection is hereby WITHDRAWN in favor of applicants.

DECISION

The petition is **GRANTED**.

This application will be forwarded to the examiner for an action not inconsistent with this decision.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 703-872-9306.



Remy Yucel
Director, Technology Center 1600